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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/900,674
Filing Date: July 06, 2001
Appellant(s): NYHAN ET AL.

Mark Joy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 20, 2008 appealing from the Office action mailed August 24, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0128898	Smith, Jr. et al	September 2002
USPN 6,728,755	de Ment et al	April 2004
USPN 6,901,424	Winn	May 2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-7, 11-17, 26-27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (U.S. 2002/0128898) in view of de Ment et al. (U.S. 6,728,755).

As per claim 1, Smith, Jr., et al. teaches a method for conducting an on-line survey in association with presentation of an on-line advertisement by a browser client, the method comprising:

Receiving by a user computer hosting a browser client a web page configured to display an on-line advertisement (See figure 2A, paragraphs 54-55, 58, 118, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client);

Issuing by the user computer in association with processing the received web page a request to an ad server for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client (See paragraphs 54-55, 58, 118, 122-5, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client);

providing, by the server in response to the issued request from the user computer the block of data including computer-readable instructions for presenting the originally accessed on-line advertisement and the block of data further including additional computer readable instructions that facilitate decision-making steps for determining whether to present an on-line solicitation via the browser client (See paragraphs 123-6, 134, 143-6, 151, and 155, wherein the ad is presented along with logic that decides if the survey/solicitation should be presented);

accessing cookie data on the user computer indicative that the on-line survey solicitations was previously presented by the browser client and denying access if the user has already been solicited (See paragraph 129).

However, while Smith, Jr. et al. discloses using cookie data to indicate previous solicitations, Smith, Jr., et al. does not expressly disclose using this cookie data to determine if the user should be presented the solicitation by accessing, on the user

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computer, a timestamp value indicative of a period of time that has passed since the online survey solicitation was previously presented by the browser client; and executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the one line survey solicitation by the browser client on the user computer.

de Ment discloses accessing and analyzing cookie data of the user computer indicative of a period of time that has passed since the on-line survey solicitation was previously presented by a browser client and executing the additional computer readable instructions if the cookie values indicate passage of a period of time satisfying the prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months). The timing in the cookie data is used to determine an elapsed time since the previous presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be presented). However, de Ment does not expressly disclose that the cookie data includes a timestamp.

Both de Ment and Smith Jr., et al. disclose presenting a survey solicitation to a user via a browser client based on presentation criteria using cookie data to indicate previous solicitations. Smith Jr., et al. specifically discloses screening a user to ensure that that user is an appropriate candidate to be surveyed, such as by using

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cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the timeframes of de Ment in the survey screening criteria of Smith Jr., et al. in order to more efficiently field a survey to qualified recipients using appropriate screening criteria.

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

As per claim 3, Smith, Jr., et al. discloses receiving cookie data from a browser client indicative of a previous presentation of the online survey solicitation (See paragraph 129).

As per claim 5, Smith, Jr. et al. teaches sending the block of data including the additional computer readable instructions to the browser client over a computer

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network (See figure 2A, paragraphs 54-55, 58, 118, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client. See also paragraphs 123-6, 134, 151, and 155, which discloses distributing over a computer network).

As per claim 6, Smith, Jr. et al. discloses presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey (See paragraphs 123-6, 134, 143-6, 151, and 155, wherein criteria about the user is used and the survey/solicitation is presented) as well as using cookie data to indicate that the on-line survey solicitation was presented by the browser client (see paragraph 129). However, Smith, Jr. et al. does not expressly disclose generating, in association with the presenting step, cookie data including the timestamp value to indicate that the online survey solicitation was presented by the browser client, and sending the generated cookie data over a computer network to the browser client.

De Ment discloses generating, in association with the presenting step, cookie data indicating that the online survey solicitation was presented by the browser client, and sending the generated cookie data over a computer network to the browser client (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months). The timing in the cookie data is used to determine an elapsed time since the previous presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be

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presented). However, de Ment does not expressly disclose that the cookie data includes a timestamp value.

Both de Ment and Smith Jr., et al. disclose presenting a survey solicitation to a user via a browser client based on presentation criteria using cookie data to indicate previous solicitations. Smith Jr., et al. specifically discloses screening a user to ensure that that user is an appropriate candidate to be surveyed, such as by using cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the timeframes of de Ment in the survey screening criteria of Smith Jr., et al. in order to more efficiently field a survey to qualified recipients using appropriate screening criteria.

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie

timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

As per claim 7, Smith, Jr. et al. discloses executing the additional computer-readable instructions to perform steps of: referencing a frequency parameter that influences the frequency of presenting the on-line survey solicitations and determining whether or not to present the on-line survey via the browser client based, in part, on the frequency parameter (See paragraphs 129-130, which discloses the frequency with which the online survey is displayed (number of times per campaign, number of times per user, etc.)).

As per claim 11, Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to the on-line survey (See paragraphs 123-6, 134, 143-6, 151, and 155). However, Smith, Jr. et al. does not expressly disclose and de Ment discloses presenting the on-line survey solicitation as a pop-up window and in response to activation of a link within the pop-up window, sending a web page to the browser client, the web page comprising questions regarding a product or service advertised in the on-line advertisement (See column 2, lines 1-15 and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure 3B, wherein a pop-up window is displayed. The user clicks through to a survey concerning a service of the webpage).

Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to the on-line survey. Pop-ups, as taught by de Ment, are well known in a web-environment and are used in survey methods. Therefore, it would have been

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obvious to one of ordinary skill in the art at the time of the invention to link to the survey solicitation via a pop-up window in order to more effectively gain the attention of the user by “popping up” a small graphical user interface.

As per claim 12, Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to the on-line survey (See paragraphs 123-6, 134, 143-6, 151, and 155). However, Smith, Jr. et al. does not expressly disclose and de Ment discloses presenting the on-line survey solicitation as a pop-up window and in response to activation of a link within the pop-up window, sending a web page to the browser client, the web page comprising questions regarding a product or service advertised in the on-line advertisement (See column 2, lines 1-15 and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure 3B, wherein a pop-up window is displayed. The user clicks through to a survey concerning a service of the webpage). However, de Ment does not expressly disclose that the pop-up concerns a product or service that is not advertised in the on-line advertisement.

Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to the on-line survey. Pop-ups, as taught by de Ment, are well known in a web-environment and are used in survey methods. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to link to the survey solicitation via a pop-up window in order to more effectively gain the attention of the user by “popping up” a small graphical user interface.

Further, de Ment discloses that the user is provided an advertisement for a survey via a pop-window based on the user's use of a search tool. The questions

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following this original invitation include questions concerning general computer use and services. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a general nature of the questions in the original pop-up in order to increase the convenience of the survey by allowing the respondent to know upfront the types of questions he/she will encounter. See column 3, line 45-column 4, line 25.

Claims 13 and 14 are substantially similar to claim 1 and are therefore rejected using the same art and rationale set forth above, as necessitated by amendment.

As per claim 15, Smith, Jr. et al. discloses wherein the one or more requested files comprise computer readable instructions for displaying the online advertisement and wherein the further instructions call a routine that decides whether or not to solicit the user to take the online survey based on a frequency parameter, the frequency parameter being indicative of a probability that in response to the selectively modifying step, the online solicitation will be submitted for presenting to the browser (see paragraphs 129-130, wherein a routine checks frequency and whether or not the system is able to display the solicitation).

Claim 16 recites equivalent limitations to claim 11 and is therefore rejected using the same art and rationale applied above.

Claim 17 is substantially similar to claim 1 and is therefore rejected using the same art and rationale set forth above, as necessitated by amendment.

As per claim 26, Smith, Jr. et al. discloses wherein the advertisement service adds first computer readable instructions for invoking a decision routine to the

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advertisement data when consideration is to be given to sending the on-line survey solicitation to the computer (See paragraphs 123-6, 134, 143-6, 151, and 155).

As per claim 27, Smith, Jr. et al. teaches wherein the survey logic server provides first computer readable instructions to the ad server (See paragraphs 145-6, 148-51, 155, wherein the survey server interacts with the ad server).

As per claim 33, Smith, Jr. et al. teaches wherein the prescribed wait period is specified by a survey logic server (See paragraphs 129-130, 145-6, 151, 155).

Claims 8-10, 21-24, and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (U.S. 2002/0128898) in view of de Ment et al. (U.S. 6,728,755) and in further view of Winn (U.S. 6,901,424).

As per claims 8 and 9, Smith, Jr. et al. discloses wherein the online survey solicitation is presented as part of a campaign, wherein the frequency parameter has a value that is at least partially a function of an amount of time remaining in the campaign (See paragraphs 129-130, which discloses the frequency with which the online survey is displayed (number of times per campaign, number of times per user, etc.)). However, neither Smith, Jr. et al., nor de Ment expressly disclose calculating the value of the frequency parameter according to an algorithm that incorporates the amount of time remaining or by referencing a look-up table that correlates a plurality of possible times remaining with corresponding possible frequency values.

Winn discloses sampling rate and frequency algorithms/processes, and further discloses soliciting users only once for a specific survey (See column 3, lines 45-65,

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column 4, lines 10-20 and 30-41) and wherein the frequency parameter is determined by referencing a look-up table (See column 3, lines 50-65, and column 4, lines 29-40). Winn further discloses a marketing campaign (See column 4, lines 10-20, which discloses a survey project).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above. Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses using sampling rates, frequency values, and frequency to determine whether to invite a user to take a survey, as well as cookie data indicating whether or not the user has been previously solicited. It would have been obvious to one of ordinary skill in the art at the time of the invention to include time values associated with the campaign in association with the frequency parameters of the survey in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected.

As per claim 10, neither Smith, Jr. et al. nor de Ment disclose and Winn teaches executing the additional computer-readable instructions to perform steps of: generating a random number; determining whether the random number falls within a set of numbers that correspond to a the frequency with which the on-line survey solicitation is presented via browser clients; and presenting the online survey solicitation based on the determining step (See column 4, lines 9-20 and 29-41, which discloses random number generation in the context of frequency selections).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above. Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections, as well as cookie data indicating whether or not the user has been previously solicited. It would have been obvious to one of ordinary skill in the art at the time of the invention to include random number generation in the frequency parameters of Smith, Jr. et al. in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected.

Claims 21, 22, 23, 24, and 28 recite substantially similar limitations to claims 10, 7, 8, 9, and 10, respectively, and are therefore rejected using the same art and rationale set forth above.

As per claim 29, Smith, Jr. et al. teaches wherein the frequency parameter is specified by a survey logic server (See paragraphs 130, 145-6, 151, 155, which disclose frequency and survey servers).

As per claim 30, Smith, Jr. et al. discloses a frequency parameter associated with a survey campaign (See paragraphs 129-130). However, Smith, Jr. et al. does not expressly disclose, nor do de Ment nor Winn, disclose changing the frequency parameter during a survey campaign.

Smith Jr. et al. discloses defining and executing a advertisement and survey campaign wherein the campaign is designed by the survey client. It is old and well

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known to be able to edit a marketing or survey campaign in order to ensure that expected results are secured. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to edit the campaign of Smith, Jr., et al. in order to ensure that wanted results are achieved.

As per claim 31, Smith Jr. et al. teaches a survey logic server (See paragraphs 130, 145-6, 151, 155). However, neither Smith, Jr. et al. nor de Ment expressly discloses providing the random number.

Winn teaches generating a random number (See column 4, lines 9-20 and 29-41, which discloses random number generation in the context of frequency selections).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above. Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections, as well as cookie data indicating whether or not the user has been previously solicited. It would have been obvious to one of ordinary skill in the art at the time of the invention to include random number generation in the frequency parameters of Smith, Jr. et al. in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected.

As per claim 32, Smith, Jr. et al. discloses using a URL by a browser on the user computer to contact the survey logic server (See at least paragraphs 143 and 146, wherein a URL is associated with the survey via a survey logic server). However,

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Smith, Jr. does not expressly disclose, nor does de Ment that the random number is appended to a URL used by a browser on the user computer to contact the survey logic server.

Winn teaches generating a random number; determining whether the random number falls within a set of numbers that correspond to a the frequency with which the on-line survey solicitation is presented via browser clients; and presenting the online survey solicitation based on the determining step (See column 4, lines 9-20 and 29-41, which discloses random number generation in the context of frequency selections). However, Winn does not expressly disclose that the random number is appended to a URL used by a browser on the user computer to contact the survey logic server.

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above. Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections. Further, Examiner takes official notice that a URL includes numbers that indicate file locations to which the URL will link. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include random number generation in the frequency parameters of Smith, Jr. et al. in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected. Further, it would have been obvious to one of ordinary skill in the art at the time of

the invention to append the random number generated to the URL in order to efficiently link to the correct file using the random number generator.

(10) Response to Argument

In the Appeal Brief, Appellant argues that 1) with respect to claims 1 and 17, neither Smith nor de Ment disclose or suggest issuing, by the user computer in association with processing the received web page, a request to an ad server, for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client; providing, by the ad server in response to the issued request from the user computer, the block of data including computer-readable instructions for presenting the on-line advertisement and the block of data further including additional computer-readable instructions that facilitate decision-making steps for determining whether to present an on-line survey solicitation via the browser client; accessing, on the user computer, a timestamp value indicative of a period of time that has passed since the on-line survey solicitation was previously presented by the browser client; and executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer, 2) with respect to claim 6, Neither Smith nor de Ment discloses storing a cookie indicating that a survey solicitation was presented on the user computer, or a need to limit repeated solicitations to take a survey or address such need by recording a timestamp

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indicating when a user was previously solicited to take a survey, 3) with respect to claims 7 and 15, they recite elements relating to "on-line survey solicitations" which are different from actual "surveys" completed by users. Appellants furthermore note that paragraphs [0129-0130] of Smith disclose limiting a "quantity" of surveys taken by a particular user rather than a "frequency" (how often) with which solicitations are presented to a particular user computer, 4) with respect to claim 11, neither Smith nor de Ment disclose linking the survey questions to a product or service advertised in the on-line advertisement provided in the block of data downloaded from the ad server, 5) with respect to claim 8, the Final Office Action does not identify any teaching in any of the three cited references directed to Appellants claimed element of changing a frequency parameter in accordance with an amount of time remaining in a campaign, and 6) with respect to claim 32, nowhere in the cited references is there a suggestion to append the randomly generated value to the URL address identifying the location of the sender of a survey request to the survey logic server that ultimately determines whether to provide the survey to the requesting user computer.

With respect to Argument 1, the Examiner respectfully disagrees. Smith Jr., et al discloses issuing by the user computer in association with processing the received web page a request to an ad server for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client (See paragraphs 54-55, 58, 118, 122-5, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client). Moreover, Smith

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Jr., et al disclose when a network user requests a web page, banners dynamically created by the automatic survey mechanism (paragraphs 121-123). As such, Smith Jr., et al indeed discloses issuing by the user computer in association with processing the received web page a request to an ad server for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client.

In addition, Smith Jr., et al disclose providing, by the server in response to the issued request from the user computer the block of data including computer-readable instructions for presenting the originally accessed on-line advertisement and the block of data further including additional computer readable instructions that facilitate decision-making steps for determining whether to present an on-line solicitation via the browser client (See paragraphs 123-6, 134, 143-6, 151, and 155, wherein the ad is presented along with logic that decides if the survey/solicitation should be presented). Moreover, Smith Jr., et al discloses when a network user requests a web page, the request containing identification data that identifies a user (i.e., client), wherein a banner (i.e., solicitation) for a particular survey is placed in the web page in response to the identification data (paragraph 121-124). As such, Smith Jr., et al indeed discloses providing, by the server in response to the issued request from the user computer the block of data including computer-readable instructions for presenting the originally accessed on-line advertisement and the block of data further including additional computer readable instructions that facilitate

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decision-making steps for determining whether to present an on-line solicitation via the browser client.

In addition, Smith Jr., et al disclose accessing cookie data on the user computer indicative that the on-line survey solicitations was previously presented by the browser client and denying access if the user has already been solicited (See paragraph 129). Moreover, de Ment discloses accessing and analyzing cookie data of the user computer indicative of a period of time that has passed since the on-line survey solicitation was previously presented by a browser client and executing the additional computer readable instructions if the cookie values indicate passage of a period of time satisfying the prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months), and the timing in the cookie data is used to determine an elapsed time since the previous presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be presented). As such, Smith Jr., et al in view of de Ment indeed disclose accessing, on the user computer, a timestamp value indicative of a period of time that has passed since the on-line survey solicitation was previously presented by the browser client.

In addition, Appellant asserts that the "executing" step, taken in combination with the previously recited "issuing", "providing", and "accessing" steps, requires: (1)

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downloading, within an ad data block from an ad server, additional instructions for determining whether to present an on-line survey solicitation, and (2) executing the additional instructions if a timestamp accessed on the user computer indicates a sufficient period of time has passed since a previous on-line survey solicitation. The Examiner respectfully disagrees.

Actually, and contrary to Appellant's assertion, the "executing" step does not require those elements. Instead, the claimed limitation simply recites "executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer."

Following, while Smith Jr. et al does not explicitly disclose this limitation, de Ment discloses accessing and analyzing cookie data of the user computer indicative of a period of time that has passed since the on-line survey solicitation was previously presented by a browser client and executing the additional computer readable instructions if the cookie values indicate passage of a period of time satisfying the prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months). The timing in the cookie data is used to determine an elapsed time since the previous

presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be presented).

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

As a result, Smith Jr., et al, in view of de Ment indeed disclose executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer.

Lastly, with respect to claim 17, Smith Jr. et al discloses network servers 262, 264 and 266 each storing data that defines a set of web pages 286, 288 and 290, respectively, each web page containing banners 268, 270 and 272, respectively. As such, Smith Jr. et al indeed discloses an advertisement server. Moreover, the

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recited requesting and sending steps are substantially similar to the method steps recited in claim 1.

With respect to Argument 2, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the elements of claim 6 do not recite "storing a cookie indicating that a survey solicitation was presented on the user computer, or a need to limit repeated solicitations to take a survey or address such need by recording a timestamp indicating when a user was previously solicited to take a survey." Rather, claim 6 recites presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey, generating, in association with the presenting step, cookie data including the timestamp value to indicate that the on-line survey solicitation was presented by the browser client; and sending the generated cookie data over a computer network to the browser client, which is indeed taught by Smith Jr., et al in view of de Ment, as seen in the above rejection.

With respect to Argument 3, the Examiner respectfully disagrees. Smith, Jr. et al discloses the automated survey mechanism creating a banner, which contains a reference to a corresponding survey (paragraphs 122-124). As such, Smith, Jr. et al indeed teaches on-line survey solicitations (i.e., banners referencing a survey).

With respect to Argument 4, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the elements of claim 11 do not recite "linking the survey questions to a product or service advertised in the on-line advertisement provided in the block of data downloaded from the ad server." Rather, claim 11 recites presenting the on-line survey solicitation as a pop-up window; and in response to

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activation of a link within the pop-up window, sending a web page to the browser client comprising questions regarding a product or service advertised in the on-line advertisement, which is indeed taught by the cited references, as seen in the above rejection.

With respect to Argument 5, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the elements of claim 8 do not recite "changing a frequency parameter in accordance with an amount of time remaining in a campaign." Rather, claim 8 recites wherein the on-line survey solicitation is presented as part of a campaign, wherein the frequency parameter has a value that is at least partially a function of an amount of time remaining in the campaign, the method further comprising calculating the value of the frequency parameter according to an algorithm that incorporates the amount of time remaining in the campaign, which is indeed taught by the cited references, as seen in the above rejection.

With respect to Argument 6, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the rejection is not based on impermissible hindsight to guide a determination of obviousness. As seen in the rejection, Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections. Further, Examiner takes official notice that a URL includes numbers that indicate file locations to which the URL will link. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to

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include random number generation in the frequency parameters of Smith, Jr. et al. in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to append the random number generated to the URL in order to efficiently link to the correct file using the random number generator.

In addition, according to rationale under KSR, the disclosed invention is merely a combination of prior art elements according to known methods to yield predictable results. Accordingly, it would have been obvious to one of ordinary skill in the art to include generating a random number; determining whether the random number falls within a set of numbers that correspond to a the frequency with which the on-line survey solicitation is presented via browser clients; and presenting the online survey solicitation based on the determining step in the frequency parameters of Smith, Jr. et al, as seen in Winn, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. Moreover, it would have been obvious to one of ordinary skill in the art to include a URL having numbers that indicate file locations to which the URL will link, which is old and well known, and to append the random number generator to the URL in the system of Smith, Jr. et al, in view of de Ment and Winn, since the claimed invention is merely a combination of old elements, and in the combination each element merely would

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have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andre Boyce/
Primary Examiner, Art Unit 3623
February 27, 2009

Conferees:

Beth Boswell, Supervisory Patent Examiner

Art Unit 3623 /bvb/

Vincent Millin /vm/

Appeals Conference Specialist